QUESTIONS PRESENTED

1) Has the Alaska Supreme Court entered a final judgment or decree on the issue of whether the Alaska courts have personal jurisdiction over petitioner Dornier?

2) Have the Alaska courts correctly applied the United States Supreme Court's Opinion in *World-Wide Volkswagen v. Woodsen*, 444 U.S. 286 (1980)?

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IN THE

Supreme Court of the United States

October Term, 1981

DORNIER GMBH, a German Corporation, *Petitioner*

v.

DONALD E. ELLIOTT and EVELYN L. ELLIOTT, individually and as Personal Representatives of the ESTATE OF SCOTT ELLIOTT, DECEASED, BUSH AIR, INC., an Alaska corporation, and WIEN AIR ALASKA, INC., an Alaska corporation, *Respondents.*

DORNIER, A. G., and DORNIER, GMBH, *Petitioners,*

v.

AVONNA L. SWEANEY, Personal Representative of the ESTATE OF GARY B. ROBERTS, BUTLER AVIATION COMPANY, HOME OIL COMPANY, LIMITED, FIELD AVIATION COMPANY, LIMITED, CLIFFORD L. SHORT, RAY E. FERGUSON, FRANK P. FERGUSON, DON FERGUSON, JOE FERGUSON, DON'S SAFARI FLYING SERVICE, KOTZEBUE FLYING SERVICE, INC., ALASKA CENTRAL AIRWAYS, INC., GEORGE GRANT, and AIRPARTS, INC., *Respondents.*

DORNIER, A. G., and DORNIER, GMBH, *Petitioners,*

v.

BUSH AIR, INC., an Alaska corporation, BUTLER AVIATION COMPANY, HAMILTON AVIATION COMPANY, HOME OIL COMPANY, FIELD AVIATION COMPANY, LIMITED, CLIFFORD L. SHORT, RAY E. FERGUSON, FRANK P. FERGUSON, DON FERGUSON, JOE FERGUSON, DON'S SAFARI FLYING SERVICE, FERGUSON'S FLYING SERVICE, KOTZEBUE FLYING SERVICE, INC., ALASKA CENTRAL AIRWAYS, INC., GEORGE GRANT, and AIRPARTS, INC., *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALASKA

BRIEF FOR RESPONDENT BUSH AIR, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JURISDICTION

Petitioner claims the jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3). However, because there has been no final judgment or decree by the Alaska Supreme Court, 28 U.S.C. §1257 does not apply and this Court does not have jurisdiction over this matter.

STATUTES AND RULES

28 U.S.C. §1257. State Courts; Appeal; Certiorari

Final judgments or decrees rendered by the highest court of State in which a decision could be had, may be reviewed by the Supreme Court as follows:

. . . .

(3)By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

United States Supreme Court Rules

Rule 17. CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another

state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari.

Alaska Appellate Rules

RULE 402. Petitions for Review of Non-appealable Orders or Decisions

(a) When Available.

(1) An aggrieved party, including the state of Alaska, may petition the appellate court as provided in Rule 403 to review any order or decision of the trial court, not appealable under Rule 202, in any action or proceeding, civil or criminal.

. . . .

(b) When Granted. Review is not a matter of right, but will be granted only where the sound policy behind the rule requiring appeals to be taken only from that final judgments is outweighed because:

(1) Postponement of review until appeal may be taken from a final judgment will result in injustice because of impairment of a legal right, or because of unnecessary delay, expense, hardship or other related factors; or

(2) The order or decision involves an important question of law on which there is substantial ground for difference of opinion, and an immediate review of the order or

decision may materially advance the ultimate termination of the litigation, or may advance an important public interest which might be compromised if the petition is not granted; or

(3) The trial court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative tribunal, as to call for the appellate court's power of supervision and review; or

(4) The issue is one which might otherwise evade review, and an immediate decision by the appellate court is needed for the guidance of the lower courts or is otherwise in the public interest.

STATEMENT OF THE CASE

On April 2, 1978, a Dornier aircraft owned and operated by respondent Bush Air, Inc. crashed near Bethel, Alaska, killing both men on board. As a result of this fatal aircrash, Bush Air and the families of the deceased each filed a lawsuit against petitioner Dornier and other defendants. These lawsuits were filed in the Alaska Superior Court, Fourth Judicial District, at Bethel, and all three were assigned to the Honorable Christopher R. Cooke, the Superior Court Judge in Bethel.[1] In each lawsuit, petitioner Dornier filed a motion to dismiss on the grounds of lack of personal jurisdiction, insufficient process, and insufficient service of process.

1. Petitioner describes Bethel as a "small, remote native community on the banks of the Kuskokwim river in western Alaska not accessable [sic] by road." In fact, Bethel is a town of approximately 4,000 people, and is serviced by two airlines which have flights to Bethel four times daily from Anchorage, a city of approximately 200,000. The airlines fly Boeing 737's and Convair 580's; the flight takes a little more than one hour. It should also be noted that, to Alaska residents, Germany is also not accessible by road.

The three lawsuits were consolidated for the purpose of the motions to dismiss, and by consent of the parties, the personal jurisdiction claim was decided separately from the process claims.

Dornier is a West German corporation which manufactures various types of aircraft in West Germany. In its arguments below, as in its petition for writ of certiorari, Dornier maintained that it had never conducted business in Alaska, had no sales revenue from Alaska and that the presence of Dornier aircraft in Alaska was a result of random resale and not Dornier's marketing efforts. Based upon these alleged facts, Dornier claimed that the Alaska court did not have personal jurisdiction over it and that plaintiff's claims could be litigated only in West Germany.

In opposing Dornier's motion in the Alaska Superior Court, respondents Bush Air and Sweaney established facts demonstrating that Dornier did have sufficient contacts with Alaska to be subject to personal jurisdiction pursuant to AS 09.05.015, Alaska's long-arm statute. A major contact, of course, was the fact that a Dornier Skyservant crashed in Alaska, killing two Alaska residents. The Dornier Skyservant owned by Bush Air was one of three Skyservants which Dornier acknowledged were in use in Alaska. The affidavit of Lester Risley, who had formerly owned and operated in Alaska the Dornier Skyservant which crashed, stated two additional Dornier aircraft had also been used in Alaska, including a new Skyservant brought to Alaska in 1971 by Butler Aviation, Dornier's United States distributor. Therefore, of the 107 Skyservants which Dornier states it sold to purchasers other than the German government, at least four were owned and operated in Alaska at various times.

The presence of these Dornier Skyservants in Alaska created a parts business for Dornier in Alaska. Risley's affidavit established that Dornier assigned him a factory representative to assist with service and parts problems; Dornier also sent him technical bulletins and flight manuals. Dornier's affidavits conceded that it sold parts to Munz Northern Airlines of Nome, Alaska, which owned and operated two Skyservants. Richard Galleher, owner of Munz, testified in his affidavit that, in the mid 1970's, he sent three purchase orders a year for approximately four years to Dornier; Dornier confirmed and filled all of those orders.

Other affidavits filed by respondents Bush Air and Sweaney established that Dornier had in fact pursued markets in the United States, including Alaska. Dornier applied for and obtained the FAA certification which would allow marketing and use of Dornier aircraft in the United States. In applying for this certification, Dornier stated that the aircraft was used in 35 countries around the world and emphasized characteristics of its planes that are particularly desireable in states such as Alaska. These claimed characteristics included: outstanding STOL (short take-off and landing) performance, simplified operation and maintenance, rugged design, ability to operate out of short, unprepared fields, convertibility to operate on wheels, skis, floats or amphibious gear, and independence from ground support. Dornier also advertised extensively in American aviation journals which are circulated in Alaska. Dornier's advertisements claimed many favorable characteristics for its planes, including their ability to fly in Arctic conditions. Alaska is the only state in which such an ability is necessary.

As stated above, Butler Aviation was Dornier's distributor in the United States. In addition, on January 17, 1978,

Dornier entered into a contract with Land-Air Sales and Leasing Inc. of Chino, California for Land-Air to become the exclusive distributor for Dornier in the western United States, in an area specifically including Alaska. On May 17, 1978, several weeks after the fatal accident at issue here, Dornier sent Land-Air written notice that Dornier was terminating the agreement with sixty days notice. The letter stated Land-Air had "the possibility to fulfill your obligations during the sixty (60) days period." The letter also reserved Dornier's right to damages for breach of contract.

As a result of the above facts and others established with admissible evidence filed by respondents, the Superior Court denied Dornier's motions to dismiss. The court found that Dornier voluntarily placed its Skyservant into the worldwide stream of commerce without restriction, that it knew its aircraft were operating in Alaska, that it had sold replacement parts to an Alaska customer, and that it had a distributor for Alaska. Added to the substantial factor of a fatal crash in Alaska, these factors constituted sufficient contacts to satisfy due process requirements and allow Alaska to acquire jurisdiction over Dornier.

Dornier moved for reconsideration of the court's decision, arguing that the court misconstrued the distributor situation. Dornier claimed that because it cancelled the distributorship agreement due to breaches, the agreement had in effect never existed and thus Dornier did not have the required minimum contacts to result in personal jurisdiction. The lower court denied the motion to reconsider, stating that even if the agreement had not been "effectively implemented," the existence of the agreement, and the inclusion of Alaska as part of the sales territory, was another factor establishing the foreseeability of Alaska as a forum for litigation involving Dornier aircraft.

Dornier next filed a Petition for Review with the Alaska Supreme Court. This petition asked for the court to exercise its discretion and review the lower court's opinion, pursuant to Alaska Appellate Rule 402. The Alaska Supreme Court declined to grant review. Ninety days after the Alaska court denied the petition, Dornier filed its petition for Writ of Certiorari, but failed to pay its docket fee for nearly three more weeks. Dornier did not comply with the United States Supreme Court Rule 19.3 requirement of notifying respondents of the date of filing and the docket number until July 22, 1981.

SUMMARY OF ARGUMENT

The Alaska Supreme Court denied Dornier's petition for discretionary review of the Superior Court's denial of Dornier's motions to dismiss. The Alaska Supreme Court's denial of the petition was not a final judgment or decree and was not a decision on the merits of the issue of personal jurisdiction. Therefore, jurisdiction of this Court under 28 U.S.C. §1257 has not been properly invoked, as review by this Court would be review of a non-final lower court decision rather than of a final decree by the highest court of the state.

Dornier cannot validly claim that the Alaska Supreme Court has misapplied this Court's opinion in *World-Wide Volkswagen v. Woodsen*, 444 U.S. 286 (1980), as the Alaska court has not issued a decision on the merits of the jurisdiction question in this case. In addition, the Alaska court's recent decision regarding personal jurisdiction in *Volkswagenwerk A.G. v. Klippan GmbH*, 611 P.2d 498 (Alaska 1980), *cert. den.*, 101 S. Ct. 385 (1980), demonstrates that the Alaska court has acknowledged and correctly inter-

preted the standards enunciated by this Court in *World-Wide Volkswagen*. Dornier is, in reality, seeking a review of the findings of fact made by the trial court, and its petition for a writ of certiorari should therefore be denied.

ARGUMENT

I. Petitioner Is Seeking Review Prematurely As There Is No Final Judgment by the Alaska Supreme Court In This Case

Petitioner Dornier alleges that its constitutional right to due process has been violated by the Alaska Superior Court's denial of Dornier's motion to dismiss the claims of respondents against Dornier. Petitioner's argument below was based upon the claim that it did not have sufficient contacts with Alaska to give the Alaska courts personal jurisdiction over it. Dornier claims to invoke the jurisdiction of this court pursuant to 28 U.S.C. §1257(3), which provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . . .
>
> (3) By writ of certiorari, . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

Dornier's petition omits any discussion of the statutory requirement that the state court judgment or decree be final before the United States Supreme Court will review the decision. By filing its petition, Dornier appears to be assuming that every Alaska Supreme Court order is a final judgment or decree. However, the Superior Court's finding of personal jurisdiction has not yet been reviewed by the Alaska Supreme Court; appeal of the lower court's decision is still possible, and thus jurisdiction for review by this Court under 28 U.S.C. §1257 does not exist.

This Court has found that, to be reviewable, the state court decision must be "final" in two senses:

> [I]t must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not merely interlocutory or intermediate steps therein. It must be the final word of a final court. [Cites omitted]

Market St. Ry. v. Railroad Commission of State of California, 324 U.S. 548, 551 (1945). One major purpose of this finality requirement is to keep at a minimum federal intrusion into state affairs. *North Dakota State Board of Pharmacy v. Snyder's Drug Stores*, 414 U.S. 156 (1973); *Radio Station WOW Inc. v. Johnson*, 326 U.S. 120 (1945).

In recent years, this Court has broadened the definition of "finality," and defined situations in which a state court decision will be considered final for the purposes of 28 U.S.C. §1257 even though proceedings in the lower state courts have not been completed. *See e.g. Cox Broadcasting Corporation v. Cohen*, 420 U.S. 469 (1975); *Local No. 438 Construction and General Laborers' Union v. Curry*, 371 U.S. 542 (1963). However, the Court has not eliminated or weakened the requirement that the decision be final in the first sense, that is, that the decision be subject to no further review in the state courts.

The "final" judgment or decree of which Dornier seeks review is a March 24, 1981 order by the Alaska Supreme Court denying Dornier's petition for review of the Superior Court's denial of a motion to dismiss. Dornier's petition to the Alaska Supreme Court was made pursuant to Alaska Appellate Rule 402, which provides that a party may petition for the review of a non-appealable order. Such review is not a matter of right, and the petitioner must show that the

policy of appealing only from final judgments is outweighed by the circumstances of his case. Alaska Appellate Rule 402. The Alaska Supreme Court does not give reasons for denying interlocutory review, but it has specifically stated that:

> A denial of a petition for review of an interlocutory order does not mean that we either approve or disapprove of the order sought to be reviewed, but merely that we decline to pass judgment at all on the action of the court.

Contento v. Alaska State Housing Authority, 398 P.2d 1000 (Alaska 1965).

In a more recent Alaska case, the plaintiff contended that the lower court lost its power to vacate its own order after a petition for review was denied; the plaintiff argued that by declining to review the order, the Alaska Supreme Court had upheld its validity and caused it to become "the law of the case." The Alaska Supreme Court found:

> *A denial of a petition for review does not constitute a determination of the issue* in a case nor is it a final judgment for the purposes of *res judicata*. A petition will be denied where the issue is simply not important or urgent enough to warrant a departure from the usual appellate procedure. *The petitioner is not foreclosed by such denial in bringing up the issue later in an appeal, since there has been no determination of the merits of the issue.* [Emphasis added]

Wolff v. Arctic Bowl, Inc., 560 P.2d 758 (Alaska 1977).

These cases make it clear that there is no final judgment of which Dornier can seek review. All that has occurred to date is that the Superior Court has denied Dornier's motion to dismiss and the Alaska Supreme Court has declined to pass on the merits of that decision prior to the time for an appeal. Because the Alaska Supreme Court has not rendered a decision on the merits, the finality requirement of 28 U.S.C.

§1257 has not been met. Further, the conditions of United States Supreme Court Rule 17, outlining the considerations governing review on certiorari, have also not been met. Rule 17 provides that review may be granted if the highest state court has made a decision which conflicts with that of another state court, of a federal court of appeals, or of this Court. No such conflict can be claimed in this case both because the highest Alaska court has not yet made any decision and because previous Alaska Supreme Court decisions do correctly apply the minimum contacts standards enunciated by this Court [See Section II].

Granting certiorari in this case would have the effect of greatly lessening the discretion of the Alaska Supreme Court in deciding whether to grant interlocutory review of Superior Court decisions. Granting certiorari would signal to the Alaska court that it risks losing its opportunity to render a later decision if it denies a discretionary petition for review, as the petitioner could use that denial as a basis for petitioning this Court for a writ of certiorari. The Alaska court would thus be forced to grant many more petitions for review of interlocutory decisions in order to retain its jurisdiction to decide the questions at all.

Allowing recourse to the United States Supreme Court on this basis would also put an unduly powerful weapon into the hands of the wealthy defendants, by allowing the imposition of greatly increased time and expense merely to move beyond interlocutory lower court decisions and get to trial. Accordingly, this Court should find that no final judgment has been rendered by the Alaska Supreme Court and that this Court has no jurisdiction pursuant to 28 U.S.C. §1257.

II. The Alaska Courts Have Correctly Applied the Standards of This Court's Decision in World-Wide Volkswagen v. Woodsen, 444 U.S. 286 (1980)

Dornier's major argument in urging this Court to review the Alaska court's finding of personal jurisdiction is that *World-Wide Volkswagen v. Woodsen*, 444 U.S. 286 (1980) controls the question of whether personal jurisdiction exists, and that the Alaska court did not correctly apply the standards set in that case. Dornier claims both that it lacked the required minimum contacts with Alaska and that the lower court incorrectly applied the "stream of commerce" theory of jurisdiction. Dornier concludes that it was not foreseeable it would be required to defend itself in Alaska and that it would be unreasonable to force it to do so.

As discussed above, the Alaska Supreme Court has not reviewed the Superior Court's finding of personal jurisdiction; therefore, Dornier cannot validly argue that the Alaska Supreme Court has misapplied *World-Wide Volkswagen*. Further, petitioner raises no argument that the Alaska Supreme Court misapplied *World-Wide Volkswagen* when it recently decided *Volkswagenwerk, A.G. v. Klippan, GmbH*, 611 P.2d 498 (Alaska 1980), *cert. den.*, 101 S. Ct. 385 (1980), another Alaska case involving personal jurisdiction over a German corporation.

The fact situation in the instant case more closely resembles the situation in the Alaska case than that in *World-Wide Volkswagen*. In *World Wide Volkswagen*, which involved personal injuries suffered in an automobile accident, the Oklahoma court found jurisdiction over two New York corporations, one a wholesaler and one a retail dealer of Volkswagens. This Court granted certiorari to consider the state court jurisdiction issue and to resolve conflicts among

the decisions of the highest courts of five different states. The Court noted there was no evidence that either company did any business in Oklahoma, shipped any products there, had an agent in Oklahoma or purchased any advertisements calculated to reach Oklahoma. There was also no evidence that any other automobile sold by either company ever entered the state of Oklahoma. This Court concluded that neither one isolated occurrence nor foreseeability alone was a sufficient contact to create jurisdiction and that the defendants did not have the minimum contacts with Oklahoma necessary to be subject to jurisdiction in the state's courts.

In contrast, the defendant in *Volkswagenwerk, A.G. v. Klippan GmbH, supra,* as in the instant case, was a German manufacturer whose product caused injury in Alaska, rather than a wholesaler or retailer.[2] The Alaska court was fully aware of the *World-Wide Volkswagen* decision and demonstrated why that decision did not bar a finding of personal jurisdiction:

> The Supreme Court held that for Oklahoma to assert personal jurisdiction over the retail dealer and wholesaler would violate their due process rights, because both were New York corporations which had no business contacts with Oklahoma and which had not attempted in any way to market any cars in Oklahoma or otherwise derive benefit from Oklahoma's laws. To hold otherwise, stated the court, would mean "[e]very seller of chattels would in effect appoint the chattel

2. The *Volkswagenwerk* defendant, Klippan, was the manufacturer of seatbelts used in Volkswagens. Accordingly, the absolute number of items, but not the percentage of Klippan's product making its way to Alaska, exceeded the number of Dornier's planes in Alaska. However, the number of items should not be determinative of the personal jurisdiction question; if it were, the manufacturers of unsuccessful, expensive or specialized-use items would be better insulated from personal injury lawsuits than the manufacturers of higher quality, more successful or less expensive products, even though both groups purposefully availed themselves of the privilege of conducting activities in Alaska.

his agent for service of process." *Id.* This is *not* in conflict with the principle we assert here, though. Klippan, in contrast to the local distributors sued in the *World Wide case*, has deliberately designed and placed its product with a manufacturing and sales organization which it knew would market its product throughout the fifty states. The *World Wide* opinion explicitly recognizes this distinction:

> Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its products in other states, it is not unreasonable to subject it to suit in one of those states if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers it products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state.

Id.

611 P.2d at 501-502 n.6 Petitioner makes no argument that Alaska court's reasoning in this opinion is in any way faulty, and the reasoning demonstrates the intervention of this Court is not necessary to guide or correct the Alaska Supreme Court in determining the personal jurisdiction issue.

In addition to *World-Wide Volkswagen*, Dornier's petition cites several other United States Supreme Court and Ninth Circuit cases regarding the manner of determining whether a defendant has sufficient minimum contacts with a state such that subjecting it to the jurisdiction of the state's courts would not violate the defendant's rights to due process; *e.g. Hanson v. Denkla*, 357 U.S. 235 (1958); *Amba Marketing Systems, Inc. v. Jobar International*, 551 F.2d 784 (9th Cir. 1977). In reality, however, Dornier is not

claiming that the Alaska court has applied the incorrect legal standard; instead, Dornier is seeking a redetermination, by this Court, of the facts found by the Superior Court.

The Alaska Superior Court found that Dornier had a distributor for Alaska, sent technical data and sold parts to Alaska residents, sought certification by the Federal Aviation Administration, advertised its products in the United States in magazines which circulated in Alaska, stressed characteristics which made its planes particularly suited to Alaska, and knew that its planes were operated in Alaska. Based upon these facts, plus the fact of fatal injury to Alaska residents, the court concluded that Dornier had sufficient contacts with Alaska to be subject to personal jurisdiction, and that it was foreseeable that Dornier would be sued in Alaska. In arguing that it did not have sufficient contacts, Dornier is now asking this Court to find that Dornier did not have an Alaskan distributor, that it earned no revenue in Alaska, that its marketing policy was not in any way aimed at selling planes in Alaska, and that its planes were in Alaska strictly by unforeseeable happenstance.

Respondent Bush Air contends that, based upon the evidence presented by all the parties, the Superior Court correctly found that Dornier had sufficient contacts with Alaska to be subject to personal jurisdiction in the Alaska courts and that such jurisdiction was both reasonable and foreseeable. However, even if the factual determinations were incorrect, this petition should not be granted. It is inappropriate to petition for a writ of certiorari simply to have this Court review evidence and decide questions of fact. *United States v. Johnston*, 268 U.S. 220 (1925); Wright, *Law of Federal Courts* 552 (3d.ed. 1976). Granting review in this case would serve no purpose other than to re-examine

and determine the facts of this particular case. This Court has very recently defined the limits of a state court's jurisdiction over non-resident defendants, and the instant case does not raise any new legal issues, nor does it involve any conflict between Alaska Supreme Court decisions and the decisions of any other appellate court. Finally, even if this issue is not eventually appealed to the Alaska Supreme Court, this Court's refusal to review the case would leave no incorrect Alaska Supreme Court precedent in place nor have a chilling effect upon any party or non-party's behavior. Accordingly, this Court should deny review of this case.

CONCLUSION

Dornier's petition is premature because the Alaska Supreme Court has not entered a final judgment on the issue of personal jurisdiction. It would further be inappropriate for this Court to review the finding that the Alaska courts have personal jurisdiction over Dornier because petitioner is merely seeking a re-examination of the Alaska Superior Court's finding of facts. Accordingly, Dornier's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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